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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959.

No. 548

FRANK HOLDER and FRANK REDDEN,
Petitioners,

vs.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

EDGAR MUSGRAVE,
616 Insurance Exchange Bldg.,
Des Moines 9, Iowa,
Attorney for Petitioners.

Of Counsel:

WHITFIELD, MUSGRAVE, SELVY, FILLMORE & KELLY.

E. L. MENDENHALL, INC., 1108 Oak Street, Kansas City 6, Mo., HArrison 1-3030

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The United States Court of Appeals for the Eighth Circuit affirmed the jury conviction of Petitioners-Defendants for violation of Section 2421, Title 18, United States Code which opinion is, as yet, unreported.

The Defendants were convicted on a trial by jury in the United States District Court for the Southern District of Iowa, Central Division, on January 16, 1959, said appeals court affirmed the conviction. The Defendants now seek a Writ of Certiorari in the United States Supreme Court under the provisions of Section 1254, Title 18, United States Code, Paragraph 1.

QUESTION PRESENTED.

The question presented for review is whether testimony of admitted prostitutes as to immoral acts, such acts not violation of Federal Statute, committed prior to indictment in a hotel on lease to Petitioner-Holder, can be introduced on behalf of the Government to prove intent on the part of Petitioners to violate, at a later date, Section 2421, Title 18, United States Code.

STATEMENT OF CASE.

The Petitioners were indicted by a Federal Grand Jury for a violation of Section 2421, Title 18, United States Code, said indictment being in three counts; Count 1 and 2 charging the Petitioners with transporting two females from Des Moines, Iowa, to Waynesville, Missouri, for the purposes of prostitution, and the third Count charging them with conspiracy to violate Section 2421, Title 18 of the United States Code.

At the trial, the two females allegedly transported, testified that they had left Des Moines, Iowa, and proceeded by train to Kansas City, Missouri, where they were then transported in Petitioner Holder's car to Waynesville, Missouri, and on the second trip they were transported from Des Moines to Waynesville, Missouri, in Petitioner Holder's car. Both females testified as to acts of prostitution at Waynesville and that the funds secured from said acts were turned over to Petitioners.

Testifying on behalf of the Government were Betty Jean Jennings, Sherryrie Ann Howard and Tillie Jeannette Lindsey, who each characterized herself as a prostitute and they each had committed acts of prostitution in the

Clyde Hotel in Minneapolis, Minnesota, which hotel was under lease to Petitioner Holder and Petitioner Redden, who was employed during a part of this time as a desk clerk. The Petitioners each testified in their own behalf and denied the material statements of the two females. The Petitioners at the time of the introduction of the testimony from Government witnesses Jennings, Howard and Lindsey, objected to said testimony as being immaterial and outside the issues of the indictment. It was received by the Trial Judge and instruction given to the jury that they may consider same to establish intent on the part of the Petitioners. Said testimony by witnesses Jennings, Howard and Lindsey related to acts and activity prior to the time of the acts set forth in the indictment.

Section 2421, Title 18, United States Code, defines a crime against the United States Government and gives jurisdiction to the United States District Court, thereby being the basis for federal jurisdiction in the Court in the first instance.

The Circuit Court of Appeals' decision upholding the introduction of such evidence decided an important question of Federal law which has not been, but should be settled by this Court. If this decision were allowed to stand, the Petitioners to rebut testimony of such witnesses as Jennings, Howard and Lindsey, will be called upon to answer charges wholly immaterial and foreign to the charge in the indictment. Such testimony has a tendency to create hostility, surprise and confusion of the issues and may raise a variety of false issues. It also calls upon the Petitioners to meet charges of which the indictment gives no information and tends to confuse them in their defense. Said evidence also carries with it the danger of undue prejudice.

CONCLUSION.

For the foregoing reasons, this Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

EDGAR MUSGRAVE,
616 Insurance Exchange Bldg.,
Des Moines 9, Iowa,
Attorney for Petitioners.

Of Counsel:

WHITFIELD, MUSGRAVE, SELVY, FILLMORE & KELLY.

CERTIFICATE.

I, Edgar Musgrave, Attorney for the Petitioners, and a member of the Bar of the Supreme Court of the United States, certify that I mailed on the 24th day of November, 1959, a copy of the foregoing Petition for a Writ of Certiorari to the Solicitor General, Department of Justice, Washington 25, D. C., and Roy L. Stephenson, United States Attorney, U. S. Court House, Des Moines, Iowa, by depositing a copy in the United States mails, postage prepaid to the above addresses.

Edgar Musgrave.